

EXHIBIT F

Part 2

11:12:41 1 What they have surrounding this is two plastic
11:12:51 2 halves and one of these, okay, has obviously been
11:13:01 3 altered to remove the grips, okay, which are shown here
11:13:09 4 and here; and then to cover or protect the USB device,
11:13:18 5 they have this plastic cap. And then this cotter ring
11:13:26 6 should really be over here, because it goes on the back
11:13:30 7 here and here, and some people will use a lanyard, okay,
11:13:35 8 to put it around their neck so they don't lose it. And
11:13:38 9 I lost one of these out of my pocket one time, just came
11:13:41 10 out, and here's some kid at school got a nice jump
11:13:45 11 drive, but that's okay.
11:13:47 12 Q. Merry Christmas, right?
11:13:49 13 A. Right.
11:13:50 14 So basically that's the Lexar JumpDrive.
11:13:54 15 Q. Okay. So when you -- when you first saw the
11:13:58 16 Lexar JumpDrive that we have here in front of us, was it
11:14:02 17 in the condition that we see it now?
11:14:05 18 A. Yes.
11:14:06 19 Q. So you did not take it apart; is that correct?
11:14:11 20 A. That is correct, sir.
11:14:12 21 Q. And did you remove the grips from the one part
11:14:16 22 of the plastic shell that has the grips removed?
11:14:24 23 A. Is the question did I remove these two parts
11:14:28 24 from this part?
11:14:29 25 Q. Yes. So let me rephrase that.

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11:14:31 1 Did you remove -- what do you want to refer to
11:14:36 2 those two black pieces as?
11:14:39 3 A. Grips.
11:14:39 4 Q. Okay. Did you remove the two black grips from
11:14:42 5 the plastic shell?
11:14:44 6 A. No, sir.
11:14:46 7 Q. Do you know who did?
11:14:48 8 A. Yes, sir.
11:14:48 9 Q. And how do you know that?
11:14:56 10 A. Two ways.
11:15:00 11 Q. Would you tell me what they are.
11:15:01 12 A. I was told that by Attorney Kaler, and I was
11:15:07 13 also told that by Mr. Paul Brown.
11:15:10 14 Q. Okay. Did you witness Mr. Brown -- okay.
11:15:14 15 Let me ask you: Who took them apart?
11:15:18 16 A. Well, to the best of my knowledge, Mr. Paul
11:15:22 17 Brown.
11:15:23 18 Q. Okay. And is that what Mr. Kaler told you?
11:15:26 19 A. Yes, sir.
11:15:27 20 Q. And that's what Mr. Brown told you?
11:15:30 21 A. That's correct.
11:15:30 22 Q. Okay. Did you witness Mr. Brown take the grips
11:15:32 23 off the plastic shell?
11:15:34 24 A. No.
11:15:34 25 Q. Who disassembled the Lexar JumpDrive that we

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11:15:38	1	see here?
11:15:39	2	A. To the best of my knowledge, Mr. Paul Brown.
11:15:42	3	Q. And did you witness Mr. Brown disassemble the
11:15:45	4	Lexar JumpDrive?
11:15:46	5	A. No, sir.
11:15:47	6	Q. Do you know who purchased the Lexar JumpDrive?
11:15:51	7	A. No, sir.
11:15:51	8	Q. Do you know where it was purchased?
11:15:53	9	A. No, sir.
11:16:02	10	Q. Do you know who prepared the drawings that were
11:16:04	11	referred to earlier that you showed -- that you held up?
11:16:16	12	A. No, sir.
11:16:30	13	Q. When did you first see the Lexar JumpDrive that
11:16:32	14	we have here on this page in front of us?
11:16:40	15	A. Again, to the best of my knowledge, maybe two
11:16:43	16	or three weeks ago.
11:16:44	17	Q. And have you seen any other Lexar JumpDrives?
11:16:48	18	A. No, sir.
11:17:12	19	Q. And where did you first see the Lexar
11:17:14	20	JumpDrive? Was that here in San Diego?
11:17:18	21	A. That's a compound question.
11:17:21	22	Q. Let me rephrase it, then.
11:17:24	23	Where did you first see the Lexar JumpDrive?
11:17:26	24	A. Ipswich, Massachusetts.
11:17:31	25	Q. And was anybody else there when you first saw

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11:17:34	1	it?
11:17:38	2	A. Best of my knowledge, no.
11:17:41	3	Q. And what did you do to inspect the Lexar
11:17:44	4	JumpDrive?
11:17:55	5	A. I looked at it basically with the unaided eye.
11:17:58	6	Q. Anything else?
11:17:59	7	A. Then I reassembled it and saw how it went
11:18:06	8	together.
11:18:11	9	Q. Did you take it apart again?
11:18:14	10	A. Yes, sir.
11:18:20	11	Q. And when you say you reassembled it, what did
11:18:24	12	you do?
11:18:26	13	A. I oriented it in different positions until it
11:18:30	14	snapped back together.
11:18:32	15	Q. You didn't -- did you put the grips back on?
11:18:36	16	A. After the two halves of the plastic were
11:18:41	17	superimposed on the circuitry.
11:18:46	18	Q. And then did you remove the grips again?
11:18:52	19	A. I just took my finger off and they fell off.
11:18:55	20	Q. Oh, I see. So you didn't glue them back on or
11:18:58	21	anything like that?
11:18:59	22	A. No.
11:19:00	23	Q. Did you do any kind of testing of the Lexar
11:19:05	24	JumpDrive?
11:19:06	25	A. Well, yes.

11:19:08	1	Q. What did you do?
11:19:10	2	A. I visually inspected it with the aided eye.
11:19:15	3	Q. Aided or unaided? I'm sorry.
11:19:18	4	A. Aided.
11:19:25	5	Q. Aided with -- by what?
11:19:26	6	A. Jeweler's loupe that clamps on my spectacles.
11:19:31	7	Q. Any other kind of testing?
11:19:33	8	A. Yes.
11:19:33	9	Q. What? What else?
11:19:38	10	A. Mechanical abrasion.
11:19:40	11	Q. And what did you do?
11:19:42	12	A. A couple of different things.
11:19:44	13	Q. Tell me what they were.
11:19:52	14	A. If you take a look at the two halves of the
11:19:58	15	plastic covering for the circuitry, we see the presence
11:20:06	16	of a molded-in pin on one side and a locating hole or
11:20:19	17	bush on the other side, and we see these both on the top
11:20:22	18	and the bottom of the jump drive.
11:20:26	19	And if you get this in the right light, you can
11:20:38	20	see some shiny areas around where these pins and holes
11:20:44	21	were, and also down in here. So the question became,
11:20:51	22	Well, how did they put this together?
11:20:59	23	So I mean I never cut my nails that short, so I
11:21:05	24	was able to dig and just scrape a little bit to see if
11:21:09	25	there was any residue that you could peel off which

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11:21:11 1 would indicate the presence of a solvent adhesive.

11:21:18 2 Q. And did you find any residue that would

11:21:20 3 indicate the presence of a solvent adhesive?

11:21:24 4 A. Well, it's very difficult to say for a fact

11:21:29 5 because this is all the work that I did, but to me, if I

11:21:37 6 had to guess or opine, I would guess or opine that this

11:21:44 7 thing was staked.

11:21:48 8 Q. What do you mean by "staked"?

11:21:52 9 A. Ultrasonically welded.

11:22:06 10 Q. And why would you opine that?

11:22:08 11 A. Well, if I wanted to do a more thorough

11:22:11 12 analysis, which I don't think is necessary here, I could

11:22:19 13 take this to a laboratory where they have a lady that

11:22:22 14 works and she is very deft with a scalpel and she could

11:22:27 15 scrape off this layer of material, and we could take a

11:22:33 16 look at it with a microscopic Fourier transform infrared

11:22:39 17 spectrophotometer and determine the chemical composition

11:22:43 18 of the material.

11:22:44 19 Q. And would that show you whether there was an

11:22:47 20 adhesive used?

11:22:49 21 A. If it differed from the chemical composition of

11:22:53 22 the underlying gray material, it would strongly indicate

11:22:58 23 that an adhesive was used. If it was the same as the

11:23:03 24 underlying gray material, then this would lead us to

11:23:08 25 conclude that it was more probable that this was staked

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11:23:11 1 together.

11:23:12 2 Q. When you say "staked together," are we talking
11:23:17 3 about the top and bottom halves being put together?

11:23:20 4 A. Yes.

11:23:20 5 Q. Okay. So we are talking about the gray
11:23:22 6 material that's along the area where the two -- where
11:23:25 7 the top and bottom half meet?

11:23:27 8 A. Well, it would be the gray material where we've
11:23:29 9 got the pin and the hole.

11:23:32 10 Q. I see.

11:23:54 11 Was there any other testing that you did in
11:23:57 12 your analysis?

11:23:57 13 A. Yes.

11:23:57 14 Q. What else did you do?

11:24:00 15 A. Well, I took a look at the surfaces underneath
11:24:10 16 which Mr. Brown had removed the grips; and, again, with
11:24:18 17 my fingernail, I scraped down in an area in which I
11:24:25 18 would have gated the gray part of the product.

11:24:32 19 Q. When you say "gated," what do you mean?

11:24:35 20 A. In the injection molding process, we plasticate
11:24:39 21 the material to be able to make it flow, and then we
11:24:44 22 force it with pressure through a gate into the cavity in
11:24:48 23 the mold to form the piece part, and the gate is the
11:24:55 24 point at which it enters the cavity of the mold.

11:25:05 25 Q. And why did you do that?

11:25:08 1 A. To try and ascertain a couple of different
11:25:10 2 things.

11:25:14 3 Q. What were you trying to ascertain?

11:25:16 4 A. Well, when I look at a plastic part, the first
11:25:19 5 thing I ask is: How was it made?

11:25:27 6 Q. Okay. Anything else that you were trying to
11:25:30 7 ascertain?

11:25:32 8 A. The other thing I try and ascertain is what
11:25:38 9 method was used to make it.

11:25:48 10 Q. Okay. Anything else?

11:25:52 11 A. Yeah. I try and take a look at how the
11:25:55 12 material was gated and how the material flowed in the
11:26:00 13 mold.

11:26:15 14 Q. And did your inspection of the Lexar JumpDrive
11:26:18 15 allow you to ascertain how the material was gated?

11:26:23 16 A. Yes, sir.

11:26:24 17 Q. And did it allow you to ascertain how the
11:26:27 18 material flowed in the mold?

11:26:29 19 A. To a certain extent, yes, sir.

11:26:31 20 Q. And to what extent did it allow you to
11:26:34 21 ascertain how the material flowed in the mold?

11:26:36 22 A. Well, what I did was I took a look at the other
11:26:41 23 side from where I found the evidence of the gate, and I
11:26:45 24 found no gate, so this means that the plastic would have
11:26:53 25 flowed from here downward to fill that half of the mold,

11:26:56 1 and then across the mold and outwardly in a radial
11:27:02 2 pattern to fill the rest of the mold.

11:27:13 3 Q. And by that do you mean there was evidence of a
11:27:15 4 gate on one side of the plastic shell, but no evidence
11:27:18 5 of a gate on the other side of the plastic shell?

11:27:23 6 A. That's correct, sir.

11:27:25 7 Q. And when I say "plastic shell," actually I'm
11:27:27 8 only referring to one-half of the plastic shell.

11:27:30 9 Do you understand that?

11:27:37 10 If what you are looking at is two separate
11:27:37 11 halves --

11:27:37 12 A. Yes.

11:27:38 13 Q. -- are they, in your opinion, being molded in
11:27:39 14 separate processes?

11:27:41 15 A. No.

11:27:43 16 Q. Are they molded all together as one piece?

11:27:49 17 A. No.

11:27:53 18 Q. Are they -- let's talk about the half on the
11:27:57 19 right-hand side.

11:27:58 20 A. On my right, or -- your left?

11:28:00 21 Q. Your right, my left.

11:28:01 22 A. Okay.

11:28:02 23 Q. Is that molded in a separate process from the
11:28:05 24 other half of the shell?

11:28:07 25 MR. KALER: And for clarity for the video, I

11:28:09 1 assume you are referring to the piece that has had the
11:28:12 2 grips removed, correct?
11:28:14 3 MR. KUDLAC: Yes.
11:28:15 4 MR. KALER: Okay.
11:28:17 5 THE WITNESS: Could you reread the question,
11:28:19 6 please.
11:28:20 7 BY MR. KUDLAC:
11:28:20 8 Q. Let me reask it. I think that might help.
11:28:24 9 In your opinion, is the half that's on the
11:28:27 10 right, the one that has the -- on your right, the one
11:28:30 11 that has the grips removed, is that molded separate and
11:28:33 12 apart from the molding of the half that's on your left
11:28:36 13 that still has the grips attached?
11:28:39 14 A. What do you mean by "separate and apart"?
11:28:42 15 Q. So that it would have -- molded such that it
11:28:47 16 would have to later be connected to the half on the
11:28:50 17 left.
11:28:51 18 A. Yes.
11:28:51 19 Q. Okay. And that was the ultrasonic welding that
11:28:55 20 you were referring to? Is that how you think they are
11:28:57 21 connected?
11:28:58 22 A. Most probably.
11:29:01 23 Q. Okay. And so when we were talking about the
11:29:09 24 evidence of gating, were you talking about the half
11:29:11 25 that's on your right, the one with the grips removed?

11:29:15 1 A. Yes.

11:29:15 2 Q. And which side of that half that's on your

11:29:18 3 right did you find the evidence of gating?

11:29:21 4 A. Right there, where my index finger is.

11:29:24 5 Q. Okay. So it's on the -- your left side of

11:29:28 6 the -- of that half of the shell; is that correct?

11:29:31 7 A. That's correct.

11:29:32 8 Q. Okay. And you did not find any evidence of

11:29:34 9 gating on the right-hand side of that half of the shell?

11:29:37 10 A. Not for the gray plastic part.

11:29:41 11 Q. Not for the gray plastic part? Okay.

11:29:44 12 Did you find any evidence of gating for the

11:29:48 13 grips?

11:29:50 14 A. Yes.

11:29:50 15 Q. Did you find that on both sides?

11:29:52 16 A. Yes, sir.

11:29:53 17 Q. And what does that indicate to you?

11:30:00 18 A. It further confirmed my suspicion of how this

11:30:05 19 was made.

11:30:09 20 Q. And what is your suspicion of how it was made?

11:30:12 21 A. Well, from my experience, I would say, you

11:30:18 22 know, that this was mostly -- most probably made in a

11:30:24 23 two-shot injection molding process.

11:30:31 24 Q. What do you mean by "a two-shot injection

11:30:34 25 molding process"?

11:30:36 1 A. The first shot would be the hard plastic, and
11:30:42 2 the second or subsequent shot would be the softer black
11:30:49 3 grip or grips.
11:30:57 4 Q. Would that be done with a common mold?
11:31:00 5 Let me rephrase that question.
11:31:02 6 When you referred to a two-shot injection
11:31:04 7 molding process, were you referring to a process that
11:31:07 8 uses a common mold?
11:31:16 9 A. I wouldn't put it that way. I would say it
11:31:18 10 uses a first common mold part.
11:31:25 11 Q. In the way that you're using "two-shot
11:31:32 12 injection molding process," do all two-shot injection
11:31:36 13 molding processes use a first common mold part?
11:31:46 14 A. I have no way of answering that, because I
11:31:49 15 don't know of all two-shot injection molding processes
11:31:54 16 that exist.
11:31:58 17 You know, maybe somebody has invented something
11:32:01 18 or developed something I haven't seen, or maybe I just
11:32:05 19 haven't seen it.
11:32:13 20 Q. In the way that you used the term "two-shot
11:32:16 21 injection molding process," are you referring to a
11:32:19 22 process that uses a first common mold part?
11:32:24 23 A. Yes.
11:32:46 24 Q. Is it possible that the halves of the Lexar
11:32:50 25 JumpDrive that we have before us were made with a

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11:32:54 1 process that did not use a two-shot injection molding
11:32:57 2 process?

11:33:01 3 A. Yes.

11:33:02 4 Q. And is it possible that the Lexar JumpDrive
11:33:05 5 that we have before us was made with a process that used
11:33:10 6 two separate single-shot injection molding processes?

11:33:15 7 A. Yes.

11:33:39 8 Q. When you performed your inspection and testing
11:33:42 9 of the Lexar JumpDrive, did you take any notes?

11:33:53 10 A. Yes.

11:33:54 11 Q. Do you still have them?

11:33:55 12 A. No.

11:33:57 13 Q. Did you provide them to Mr. Kaler?

11:34:00 14 A. Yes, sir.

11:34:03 15 Q. Thank you. Were you -- when you did your
11:34:08 16 inspection of the Lexar JumpDrive, were you provided any
11:34:13 17 notes or documentation other than what we've seen here
11:34:18 18 today that were part of the package that you opened up
11:34:21 19 for us?

11:34:22 20 A. No, sir.

11:34:23 21 Q. Were you given any photographs?

11:34:27 22 A. No, sir.

11:34:28 23 Q. Did you take any photographs?

11:34:30 24 A. No, sir.

11:34:39 25 Q. From your inspection of the Lexar JumpDrive,

11:34:42 1 can you tell what injection molding machine was used to
11:34:48 2 make it?

11:34:55 3 A. Well, again, with an engineering level of
11:34:58 4 certainty, I'd say that this was probably made on a
11:35:06 5 two-shot injection molding machine with a rotary table
11:35:10 6 or mold.

11:35:28 7 Q. You used the phrase, "engineering level of
11:35:31 8 certainty."

11:35:32 9 A. Yes.

11:35:33 10 Q. What does that mean?

11:35:34 11 A. Well, it's based on the engineering principles
11:35:38 12 that I understand.

11:36:00 13 Q. As part of your investigation or analysis of
11:36:03 14 the Lexar JumpDrive, did you do anything to determine
11:36:08 15 what processes, other than a two-shot injection molding
11:36:12 16 process, could have been used to manufacture it?

11:36:17 17 A. Yes, sir.

11:36:18 18 Q. What did you do?

11:36:26 19 A. Well, I took a look at the gating of the hard
11:36:30 20 gray plastic material vis-a-vis the gating of the soft
11:36:37 21 black material, and I referred to my experience, okay,
11:36:48 22 in two-shot injection molding, and I concluded that this
11:36:56 23 part was probably -- or most probably made using a
11:37:03 24 two-shot process with a rotary mold.

11:37:32 25 (Exhibit 5 was marked for identification.)

11:37:33 1 BY MR. KUDLAC:

11:37:33 2 Q. Sir, I'm handing you what has been marked as

11:37:36 3 Exhibit 5, which is a document entitled, "Declaration of

11:37:41 4 Stephen Petrie, Ph.D., in Support of Plaintiff's Amended

11:37:45 5 Motion for Application of 35 U.S.C. §295 Presumption of

11:37:50 6 Infringement."

11:37:54 7 Sir, do you recognize Exhibit 5?

11:37:58 8 A. Yes, I do.

11:38:00 9 Q. Is that the declaration that you have signed in

11:38:03 10 this case of Sorensen versus Lexar Media?

11:38:08 11 A. Yes, it is.

11:38:11 12 Q. Sir, do you provide in that declaration, which

11:38:13 13 is Exhibit 5, any description of the gating analysis

11:38:19 14 that you performed in your inspection of the Lexar Media

11:38:24 15 product?

11:38:28 16 A. In order to save time, to the best of my

11:38:32 17 recollection, no.

11:38:34 18 Q. Sir, in Exhibit 5, your declaration, do you

11:38:37 19 provide any description of the abrasion testing that you

11:38:42 20 performed?

11:38:44 21 A. Again, to the best of my knowledge, no.

11:38:57 22 Q. Sir, in Exhibit 5, your declaration, do you

11:39:00 23 provide a description of your experience with two-shot

11:39:06 24 injection molding processes?

11:39:11 25 A. Again, to the best of my recollection, no.

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11:39:18 1 Q. Sir, in Exhibit 5, do you provide a description
11:39:23 2 of your knowledge of the commercially available
11:39:31 3 injection molding processes?

11:39:31 4 A. Again, to the best of my knowledge, no.

11:39:35 5 Q. Sir, in Exhibit 5 do you provide a description
11:39:38 6 of your analysis in determining what is a commercially
11:39:47 7 reasonable injection molding process?

11:39:49 8 A. Again, to the best of my knowledge, no.

11:39:57 9 Q. I apologize. I rephrase -- I'm going to have
11:39:59 10 to ask a similar question to the last one, because I
11:40:02 11 think I got the phrasing wrong.

11:40:04 12 In Exhibit 5, sir, do you provide a description
11:40:07 13 of what you consider to be a commercially practical
11:40:14 14 injection molding process?

11:40:16 15 A. Again, to the best of my knowledge, no.

11:40:23 16 Q. And, one more question of that nature: Sir, in
11:40:25 17 Exhibit 5, do you provide a description of your analysis
11:40:30 18 of how you came to the conclusion as to what a
11:40:35 19 commercially practical injection molding process is?

11:40:40 20 A. Again, no.

11:40:47 21 Q. Sir, did you prepare your declaration,
11:40:50 22 Exhibit 5?

11:40:52 23 A. I worked on it.

11:40:53 24 Q. Okay. Who did you work on it with?

11:40:56 25 A. Attorney Kaler.

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11:40:57 1 Q. And you reviewed it for accuracy before you
11:41:01 2 signed it?

11:41:02 3 A. Yes, I did, sir.

11:41:28 4 Q. As part of your analysis of the Lexar
11:41:30 5 JumpDrive, did you do any comparison of the Lexar
11:41:36 6 128 meg JumpDrive to any other jump drives?

11:41:44 7 A. No.

11:41:44 8 Q. As part of your investigation of the Lexar
11:41:46 9 JumpDrive, did you do anything to determine what
11:41:50 10 injection molding processes were available in China
11:41:53 11 between the years 2002 and 2008?

11:41:59 12 A. No.

11:42:44 13 Q. Sir, if I could get you to turn to page 2 of
11:42:47 14 Exhibit 5, which is your declaration --

11:42:49 15 A. Yes.

11:42:52 16 Q. -- in the paragraph numbered 3, towards the end
11:42:58 17 of that paragraph you make reference to discernible
11:43:03 18 elements of Claim 1 of United States patent 4,935,184.

11:43:11 19 Do you see that?

11:43:12 20 A. Yes.

11:43:25 21 (Exhibit 6 was marked for identification.)

11:43:26 22 BY MR. KUDLAC:

11:43:26 23 Q. I know you already have a copy of this, but I'm
11:43:29 24 going to mark it for the record.

11:43:31 25 Handing you what has been marked as Exhibit 6,

11:43:34 1 which is a copy of U.S. patent 4,935,184, and if it's
11:43:42 2 okay with you, I will refer to that as the '184 patent.
11:43:45 3 A. That's fine.
11:43:49 4 Q. Maybe save us a little time.
11:43:51 5 In paragraph 3 of your declaration, which is
11:43:53 6 Exhibit 5, when you refer to discernible elements of
11:43:58 7 Claim 1 of the '184 patent, what were you referring to?
11:44:04 8 A. Well, if we go back in the patent to the --
11:44:14 9 Q. And I just realized that pages 9 and 10 are not
11:44:18 10 in it, in my own copy, at least.
11:44:21 11 MR. KALER: In that case, I'll object this is
11:44:23 12 not a true copy of the '184 patent.
11:44:25 13 MR. KUDLAC: It is not.
11:44:26 14 How is it possible that we end up with a copy
11:44:28 15 that doesn't have the columns that we care about?
11:44:32 16 THE WITNESS: Human error.
11:44:34 17 MR. KUDLAC: Yes, I guess so.
11:44:35 18 Why don't we -- I know it's early, but why
11:44:37 19 don't we take a few-minute break and see if we can
11:44:41 20 straighten this out.
11:44:42 21 MR. KALER: Sure.
11:44:42 22 MR. KUDLAC: I'll see if I can straighten it
11:44:42 23 out.
11:44:43 24 MR. KALER: If you need use of the copy
11:44:44 25 machine, I can provide that.

11:44:45 1 MR. KUDLAC: Thank you.

11:44:46 2 THE VIDEO OPERATOR: This concludes Tape 1 of

11:44:48 3 the deposition of Stephen Petrie. Off the record at

11:44:51 4 11:44.

11:44:53 5 (Discussion off the record)

11:44:53 6 (Luncheon recess taken at 11:55 a.m.)

11:44:53 7 * * *

13:03:43 8 San Diego, California June 4, 2008 1:04 p.m.

13:04:17 9 THE VIDEO OPERATOR: This is Tape 2 of the

13:04:19 10 deposition of Stephen Petrie, Ph.D. Back on the record

13:04:22 11 at 1:04 p.m.

13:04:26 12

13:04:26 13 CONTINUED EXAMINATION

13:04:26 14 BY MR. KUDLAC:

13:04:26 15 Q. Dr. Petrie, we've handed you what has been

13:04:29 16 marked as Defendants' Exhibit 6, which is a full copy

13:04:34 17 now of the '184 patent.

13:04:40 18 And before the break I was asking you a

13:04:41 19 question about paragraph 3 of your declaration, so if

13:04:42 20 you have that in front of you also, I'll direct your

13:04:45 21 attention back to that and reask the question if I

13:04:48 22 could, just so we're all on the same page.

13:04:52 23 So paragraph 3 of your declaration, which is

13:04:56 24 Exhibit 5, in the next to the last line of paragraph 3

13:05:09 25 of your declaration, it makes reference to the

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13:05:12	1	discernible elements of Claim 1 of the '184 patent.
13:05:16	2	Do you see that?
13:05:18	3	A. Yes.
13:05:18	4	Q. And what were you referring to as the
13:05:21	5	discernible elements of Claim 1 of the '184 patent?
13:05:27	6	MR. KALER: Okay. I'm going to read an
13:05:28	7	objection into the record.
13:05:30	8	The patent local rules for the Northern
13:05:32	9	District of California dated 2001, which are the
13:05:37	10	effective local rules for this particular case, at
13:05:41	11	§2.5(b) notes that a party may object, however, to
13:05:50	12	responding to the following categories of discovery
13:05:53	13	requests or to decline to provide information in its
13:05:57	14	initial disclosures under Federal Rules of Civil
13:06:01	15	Procedure 26(a)(1) on the ground that they are premature
13:06:05	16	in light of the timetable provided in the patent local
13:06:08	17	rules Section (b), requests seeking to elicit from the
13:06:13	18	patent claimant a comparison of the asserted claims and
13:06:17	19	the accused apparatus, product, device, process, method,
13:06:21	20	act, or other instrumentality.
13:06:24	21	And so for this line of questioning, I'm
13:06:27	22	interposing an objection under patent local rules §2-5,
13:06:32	23	subsection (b).
13:06:37	24	BY MR. KUDLAC:
13:06:37	25	Q. You can answer.

13:06:40 1 A. I can answer?

13:06:41 2 MR. KALER: You can answer the question. I'm

13:06:42 3 just preserving the objection.

13:06:44 4 THE WITNESS: All right. Could you reread the

13:06:47 5 question, please.

13:06:49 6 BY MR. KUDLAC:

13:06:49 7 Q. What were you referring to as the discernible

13:06:53 8 elements of Claim 1 of the '184 patent in paragraph 3 of

13:06:58 9 your declaration?

13:06:59 10 A. Well, if we turn to the '184 patent, in

13:07:07 11 column 9 on line 30, it's stated, "I Claim: 1," so

13:07:22 12 that's Claim 1, and underneath that, it lists the

13:07:28 13 elements of Claim 1.

13:07:34 14 Q. So were you referring -- so are those the ones

13:07:39 15 that are referred to with the parentheticals around the

13:07:42 16 letters A through I?

13:07:44 17 MR. KALER: Can we just agree that there's a

13:07:45 18 continuing objection to all questions on this issue

13:07:47 19 under patent local rule 2-5 sub (b)?

13:07:51 20 MR. KUDLAC: Of course.

13:07:51 21 MR. KALER: Okay. So I won't have to interpose

13:07:54 22 that again.

13:07:54 23 MR. KUDLAC: I appreciate that.

13:07:55 24 MR. KALER: Okay. Go ahead.

25

13:07:59 1 BY MR. KUDLAC:

13:07:59 2 Q. So when you refer to discernible elements of

13:08:04 3 Claim 1 in the '184 patent in paragraph 3 of your

13:08:08 4 declaration, were you referring to the paragraphs that

13:08:10 5 are labeled A through I of Claim 1 of the '184 patent?

13:08:14 6 A. Yes, sir.

13:08:15 7 Q. Were you also referring to the paragraph

13:08:19 8 numbered 1 that leads up to the paragraph with an A,

13:08:22 9 which then that paragraph is approximately on lines 31

13:08:28 10 through 39 of column 9?

13:08:38 11 A. Yes.

13:08:39 12 Q. So by referring to all the discernible elements

13:08:42 13 of Claim 1 of the '184 patent, is it your intent in your

13:08:47 14 declaration to say that all of the elements -- that

13:08:51 15 first introductory paragraph to Claim 1, as well as the

13:08:54 16 paragraphs labeled A through I -- are all discernible

13:08:58 17 from your inspection of the Lexar JumpDrive?

13:09:03 18 MR. KALER: Objection. Misstates his

13:09:05 19 declaration.

13:09:09 20 The witness may answer.

13:09:10 21 THE WITNESS: Well, basically what I was going

13:09:12 22 from was column 9, line 30; the column 10, line 13.

13:09:27 23 BY MR. KUDLAC:

13:09:27 24 Q. From your inspection of the Lexar JumpDrive,

13:09:31 25 were you able to determine that each of the steps listed

13:09:37 1 for Claim 1 in the '184 patent were performed in the
13:09:44 2 process of manufacturing the Lexar JumpDrive?

13:09:52 3 A. I was not able to absolutely determine that
13:09:58 4 these steps were followed, but I concluded that these
13:10:06 5 steps were most probably followed.

13:10:17 6 Q. Were there any steps of the -- of Claim 1 of
13:10:21 7 the '184 patent that were harder for you to determine
13:10:26 8 they were most probably followed?

13:10:33 9 A. Reflecting back on my analysis, I would say no.

13:10:40 10 Q. So they were all about the same level of
13:10:42 11 difficulty in order to determine that they were most
13:10:44 12 probably followed?

13:10:52 13 A. In my end analysis, yes.

13:10:58 14 Q. In paragraph 3 of your declaration, the -- on
13:11:02 15 the second and third lines, it refers to the two
13:11:08 16 plastic -- injection molded external plastic shells of
13:11:13 17 the Lexar Media JumpDrive 128 megabyte, and then in
13:11:18 18 parentheses, "(the Accused Products)."

13:11:21 19 Do you see that, sir?

13:11:23 20 A. Yes.

13:11:26 21 Q. When you refer to "the Accused Products," are
13:11:29 22 you referring to the entirety of the Lexar Media
13:11:37 23 JumpDrive as it's finally put together?

13:12:12 24 A. In this case, I was -- restate the question.

13:12:27 25 Q. Yes. When you refer to the "Accused Products"

13:12:30 1 in paragraph 3 of your declaration, where it defines
13:12:33 2 "Accused Products" -- do you see that in the second and
13:12:37 3 third lines there?
13:12:38 4 A. Yes.
13:12:38 5 Q. Okay. When you are referring to "Accused
13:12:45 6 Products" in your declaration, were you referring to the
13:12:46 7 entirety of the Lexar Media JumpDrive as it's finally
13:12:48 8 assembled?
13:12:50 9 A. Yes.
13:12:51 10 Q. And so that refers to the two halves of the
13:12:55 11 plastic shell as they are assembled together enclosing
13:12:59 12 the electronics; is that correct?
13:13:22 13 A. Well, I looked at it from the perspective of
13:13:27 14 the entire jump drive, but, you know, given the
13:13:33 15 hypothetical that maybe this part could be sold by
13:13:44 16 itself, it could be just one part or the other.
13:13:46 17 Q. Okay. I'm not trying to pose a hypothetical;
13:13:50 18 I'm just trying to determine what you were referring to
13:13:53 19 as accused product, and whether you meant the whole
13:13:55 20 thing as assembled together.
13:13:58 21 A. Well, initially that's what I meant, was the
13:14:02 22 whole thing together.
13:14:04 23 Q. Okay. Is there any point in your declaration
13:14:33 24 where you refer to -- where you use the term "Accused
13:14:38 25 Products" in a different way?

13:14:45 1 A. Not to my knowledge.

13:15:00 2 Q. Would you turn to paragraph 39 of your

13:15:03 3 declaration, which is Exhibit 5, and it's on page 8.

13:15:17 4 A. Yes.

13:15:19 5 Q. In paragraph 39 of your declaration, you state,

13:15:23 6 "My examination of the relevant features of the Accused

13:15:28 7 Products, and my knowledge of practices in the plastic

13:15:33 8 injection molding field together form the basis of my

13:15:36 9 determination that the Accused Products with high

13:15:38 10 confidence are manufactured utilizing the '184 process

13:15:43 11 as detailed further below."

13:15:46 12 Do you see that?

13:15:47 13 A. Yes.

13:15:51 14 Q. Does this paragraph state all of the bases for

13:15:55 15 your opinions that you set forth in the declaration

13:15:57 16 concerning whether the Lexar Media JumpDrive is

13:16:02 17 manufactured with a process covered by the '184 patent?

13:16:12 18 A. I missed the first part of the question. I'm

13:16:14 19 sorry.

13:16:15 20 Q. Does this paragraph, paragraph 39 of your

13:16:17 21 declaration, state the full bases for your opinions

13:16:21 22 concerning whether the Lexar Media JumpDrive was

13:16:24 23 manufactured utilizing a process covered by the '184

13:16:28 24 patent?

13:16:28 25 A. No.

13:16:29 1 Q. Okay. Where else do you state the bases that
13:16:34 2 form your opinion on that matter?
13:16:37 3 A. It's not stated.
13:16:38 4 Q. Okay. Why not?
13:16:51 5 A. I did further examination of the Lexar
13:16:54 6 JumpDrive subsequent to writing this document.
13:17:06 7 Q. For the opinions that you express in this
13:17:10 8 document, your declaration, are the full bases stated in
13:17:14 9 paragraph 39?
13:17:27 10 A. Well, below I go in and -- for the detailed
13:17:36 11 list.
13:17:42 12 Q. So the -- below is the further detail of how
13:17:45 13 you compared the claims to what you believe to be the
13:17:47 14 process used to manufacture; is that correct?
13:17:50 15 A. Yes, sir.
13:17:59 16 Q. Other than the examination of the relevant
13:18:03 17 features of the accused products that you refer to in
13:18:06 18 paragraph 39, and the knowledge of practices in the
13:18:11 19 plastic injection molding field that you also refer to
13:18:15 20 in paragraph 9, are there any other bases for your
13:18:18 21 opinions stated in the declaration?
13:18:27 22 A. At this point when I wrote the document, I'd
13:18:30 23 say no.
13:18:30 24 Q. Okay. In your declaration, is it correct that
13:19:18 25 you did not provide a summary of the available injection

13:19:22 1 molding processes between the 2002 and 2008 time frame?

13:19:28 2 A. That's correct.

13:19:35 3 Q. And do you recall -- I'm sorry. Let me

13:19:38 4 rephrase that.

13:19:39 5 In your declaration, do you recall saying that

13:19:41 6 you relied on the file history of the '184 patent to

13:19:45 7 perform your analysis?

13:19:54 8 A. I -- yes, this would be included.

13:19:56 9 Q. Okay. But does the declaration say that?

13:20:01 10 A. I don't think so.

13:20:06 11 Q. Does your declaration set forth your

13:20:09 12 construction of any of the terms in the claims of the

13:20:12 13 '184 patent?

13:20:21 14 A. I compared, okay, the claims set forth under

13:20:28 15 Claim 1 to the product, but I didn't make a claim

13:20:33 16 construction chart.

13:20:35 17 Q. Did you set forth in the declaration what you

13:20:37 18 believed to be the -- the proper construction of the

13:20:40 19 claims?

13:20:43 20 A. Yes.

13:20:45 21 Q. Could you show that to me.

13:20:52 22 A. Well, for example, on page 9, line 9 -- this

13:21:05 23 would be 47 -- "The accused products have a closed end

13:21:09 24 and an open end and are produced by cyclic injection

13:21:15 25 molding."

13:21:19 1 And "I claim: 1, a method of cyclic injection
13:21:24 2 molding, a thin-walled, hollow plastic product having a
13:21:27 3 closed end and an open end," so I went through and I
13:21:31 4 compared the product to the claims to see if it met each
13:21:36 5 and every one of these requirements.

13:21:39 6 Q. Okay. That's actually not what I'm asking you,
13:21:42 7 so let me rephrase my question.

13:21:44 8 A. Okay.

13:21:44 9 Q. I must have --

13:21:45 10 A. Sorry.

13:21:46 11 Q. That's quite all right. I understand what you
13:21:48 12 are saying and I must be saying something wrong. So let
13:21:52 13 me try it again. I must be asking the question in a bad
13:21:56 14 way that we are talking past each other.

13:21:59 15 In terms of stating what you believe the claims
13:22:01 16 of the patent mean -- regardless of whether they apply
13:22:05 17 to the accused products or not, but what the claim terms
13:22:09 18 mean -- in any place in your declaration did you go
13:22:11 19 through the claim and say, This claim term means this,
13:22:19 20 and, That claim term means that? Did you do anything --
13:22:22 21 any of that kind of analysis in your declaration?

13:22:24 22 A. No.

13:22:52 23 Q. Is it correct that you did not have the
13:22:55 24 opportunity to inspect the molds that were used to form
13:22:59 25 the products that are accused of infringement, the Lexar

13:23:04 1 128 meg JumpDrive?

13:23:07 2 A. That's correct.

13:23:09 3 Q. Would -- is -- I'm sorry. Let me rephrase

13:23:12 4 that.

13:23:12 5 Is inspecting the molds the only way to

13:23:15 6 determine with, as I believe you said earlier, absolute

13:23:19 7 certainty what process was used to manufacture the

13:23:23 8 accused products?

13:23:29 9 A. To be absolutely sure, I'd have to say yes.

13:23:37 10 Q. Would inspecting mold drawings allow you to be

13:23:41 11 absolutely sure?

13:23:46 12 A. Well, I would say no.

13:23:49 13 Q. Why not?

13:23:51 14 A. Because I can conceive a way to make mold

13:23:56 15 drawings that would produce the same product using a

13:24:02 16 different process.

13:24:03 17 Q. For example, a single-shot process that was

13:24:06 18 repeated that you used -- I'm sorry.

13:24:08 19 For example, a multiple single-shot process?

13:24:14 20 A. Yes, sir.

13:24:14 21 Q. And by "multiple single-shot process," you

13:24:18 22 understand me to mean doing a single-shot injection

13:24:21 23 mold, taking the plastic piece out, and putting it into

13:24:25 24 a different mold?

13:24:26 25 A. That's correct.

13:24:26 1 Q. Okay. And is it your understanding that using
13:24:29 2 a multiple single-shot process would not use the claims
13:24:32 3 of the '184 patent?

13:24:37 4 A. Yes.

13:24:54 5 Q. If you knew what brand and version of an
13:24:59 6 injection molding machine was used in the manufacturing
13:25:02 7 process, would that allow you to tell whether a multiple
13:25:07 8 single-shot process was used, as compared to a two-shot
13:25:14 9 injection molding process?

13:25:16 10 A. It's --

13:25:17 11 MR. KALER: Can you clarify that question? Are
13:25:18 12 you -- are you saying if he knew the molding machine
13:25:23 13 that was used?

13:25:25 14 MR. KUDLAC: Yes.

13:25:25 15 MR. KALER: Is that the question?

13:25:31 16 THE WITNESS: It might be possible if, for
13:25:32 17 instance, a company like Husky made a certain model
13:25:38 18 injection molding machine that was only capable of
13:25:41 19 making single shots, but if they made the same company
13:25:47 20 and same model number that was available in a single
13:25:51 21 shot and multi-shot configuration, then no.

13:25:56 22 BY MR. KUDLAC:

13:25:56 23 Q. Because you could use it in either way, either
13:25:59 24 method, a single shot or a multi-shot?

13:26:03 25 A. Yes.

13:26:03 1 Q. Fair enough.

13:26:53 2 Would you turn to page 4 of your declaration,

13:26:55 3 and, in particular, paragraph 17.

13:27:06 4 In paragraph 17 of your declaration, you state

13:27:10 5 that "The '184 patent provides a long-sought elegant

13:27:14 6 solution to a pervasive problem in the injection molding

13:27:19 7 of hollow plastic products."

13:27:21 8 Do you see that?

13:27:23 9 A. Yes.

13:27:23 10 Q. Do you provide a basis in your declaration for

13:27:25 11 saying the '184 patent provides a long-sought elegant

13:27:29 12 solution?

13:27:33 13 A. No.

13:27:34 14 Q. Did you ever write about in any of your papers

13:27:37 15 that there was a need for -- that there was a pervasive

13:27:43 16 problem in injection molding of hollow plastic products,

13:27:46 17 i.e., how to stabilize the mold parts against relative

13:27:50 18 movement against the highly pressurized injection of

13:27:53 19 molten plastic?

13:27:56 20 A. What do you mean by "papers"?

13:27:58 21 Q. Any of the papers that are listed in your CV.

13:28:05 22 A. Would these include lecture notes?

13:28:07 23 Q. Well, let's just talk about the papers that are

13:28:10 24 in your CV.

13:28:11 25 A. So we're limiting this to technical

13:28:13	1	publications?
13:28:14	2	Q. Yes, sir.
13:28:15	3	A. No, I haven't.
13:28:16	4	Q. Have you talked about that subject in lecture
13:28:18	5	notes?
13:28:19	6	A. Yes, sir.
13:28:19	7	Q. And when did you do that?
13:28:22	8	A. When I teach courses in injection molding.
13:28:24	9	Q. And when did you start talking about that being
13:28:27	10	a pervasive problem?
13:28:32	11	A. I don't know. As long as I've been teaching
13:28:35	12	injection molding.
13:28:36	13	Q. Is that since 1979?
13:28:40	14	A. Yeah, covered core shift.
13:28:45	15	Q. I'm sorry?
13:28:45	16	A. I've covered core shift.
13:28:47	17	Q. And core shift is what you're referring to as
13:28:50	18	mold parts -- stabilize the mold parts against relative
13:28:54	19	movement during the highly pressurized injection of
13:28:57	20	molten plastic?
13:28:59	21	A. Right.
13:28:59	22	Q. Okay. Do you still have the lecture notes?
13:29:05	23	A. I use books and courses on mold design and
13:29:09	24	injection molding that -- this is published in
13:29:11	25	textbooks, so whether or not I still have the slide that

13:29:17 1 I excerpted, I don't know.

13:29:20 2 Q. Okay. That's fine. I'm just asking if you

13:29:22 3 have them.

13:29:23 4 What textbooks do you use?

13:29:26 5 A. I use a book by Mangus about how to make

13:29:31 6 injection molds. I use a couple of books by Potsche --

13:29:43 7 Q. By whom?

13:29:44 8 A. I'm trying to think of how to spell his name.

13:29:47 9 P-o-t-s-c-h-e.

13:29:50 10 -- on injection molding. It's covered in mold

13:30:02 11 design books and molding books.

13:30:03 12 Q. Okay. Would you turn over to paragraph 19 of

13:30:16 13 your declaration, which is on page 5; in particular the

13:30:21 14 third sentence which reads -- on line 10 -- "With regard

13:30:27 15 to those few elements for which absolute determination

13:30:31 16 is not possible without inspection of the mold tooling,

13:30:34 17 the best evidence that can be gathered from the

13:30:36 18 examination of the accused products and a consideration

13:30:39 19 of the commercially reasonable techniques that may be

13:30:43 20 employed shows that those elements were most reasonably

13:30:46 21 present in the accused processes."

13:30:53 22 Do you see that?

13:30:54 23 A. Yes.

13:30:54 24 Q. Which elements were you referring to for which

13:30:55 25 absolute determination is not possible without

13:30:56 1 inspection of the mold tooling?

13:31:00 2 A. Wow. If we start off under the "I claim," if

13:31:20 3 we take a look at the utilizing a first mold cavity and

13:31:23 4 a second mold cavity, the first mold cavity being

13:31:29 5 defined by a common mold part, this may or may not be

13:31:34 6 discerned. And, for instance, I give injection mold,

13:31:43 7 the gray part, in a single-shot machine, and then

13:31:48 8 transfer it to a mold on the second machine, and then

13:31:57 9 subsequently injection-mold the grips, or I could do it

13:32:04 10 as stated in the '184 patent: Using a cyclic injection

13:32:10 11 molding machine with a rotating mold. I might even gate

13:32:18 12 them the same way.

13:32:21 13 Q. When you say "gate them the same way," do you

13:32:24 14 mean gate them the same way using the two-shot process

13:32:28 15 versus the two, single-shot processes?

13:32:31 16 A. Right.

13:32:32 17 Q. Okay. In line 13 of that paragraph 19, you

13:32:42 18 refer to consideration of the commercially reasonable

13:32:44 19 techniques that may be employed.

13:32:46 20 A. Yes.

13:32:48 21 Q. In your declaration, do you identify any

13:32:55 22 commercially reasonable techniques other than the

13:32:59 23 multi-shot process that you say is covered by the '184

13:33:02 24 patent?

13:33:03 25 A. No.

13:33:07 1 Q. And do you provide any detail of the
13:33:08 2 consideration of the commercially reasonable techniques
13:33:10 3 that you went through in your analysis? Do you provide
13:33:13 4 that in the declaration?

13:33:15 5 A. No.

13:33:47 6 Q. Were there any other elements that you were
13:33:52 7 referring to as the few elements for which absolute
13:33:56 8 determination is not possible without inspection of the
13:33:59 9 mold tooling, other than the one that you just referred
13:34:01 10 to?

13:34:18 11 A. Some of these things go hand in hand, like, for
13:34:21 12 instance, under 1(c), you solidify the injection; inject
13:34:41 13 the first plastic material to form a first plastic
13:34:45 14 material component, combining the first common mold part
13:34:49 15 with the second complementary mold part to assemble the
13:34:54 16 second mold cavity with the first plastic material
13:34:58 17 component attached to the first common mold part, so
13:35:01 18 when the second mold cavity is assembled, the first
13:35:04 19 plastic material component is contained within the
13:35:07 20 second mold cavity; this goes hand in hand with the
13:35:11 21 previous one, because if you're going to do these in two
13:35:15 22 separate machines, you are not going to meet this
13:35:17 23 element either.

13:35:19 24 Q. So if you are doing them in two separate
13:35:21 25 machines, you won't have a first common mold part, and

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13:35:24 1 so then any of these elements that talk about a first
13:35:28 2 common mold part, they wouldn't be there?

13:35:32 3 A. Right.

13:35:32 4 Q. Okay. Would you look at paragraph 20 of your
13:35:46 5 declaration, and in particular the second sentence that
13:35:49 6 reads, "Most high quality products, as the Accused
13:35:53 7 Products, are made in molds comprising a common mold
13:35:57 8 part."

13:35:57 9 Do you see that?

13:35:58 10 A. Yes.

13:35:59 11 Q. Do you provide any basis for your statement --
13:36:03 12 I'm sorry. Let me rephrase that.

13:36:05 13 Do you provide any basis in your declaration
13:36:07 14 for the statement that "most high quality products, as
13:36:11 15 the Accused Products, are made in molds comprising a
13:36:14 16 common mold part"?

13:36:15 17 A. No, I don't.

13:37:09 18 Q. Would you turn to paragraph 48 of your
13:37:12 19 declaration, which is on page 9.

13:37:31 20 And you'll see if you read paragraph 48, that
13:37:33 21 there's also a reference to the first common mold part
13:37:36 22 in there.

13:37:38 23 If a first common mold part is not used in a
13:37:41 24 process to manufacture the Lexar JumpDrive, then this
13:37:48 25 paragraph 48 would not be true; is that correct?

13:38:15 1 A. What was the question again, please?

13:38:17 2 Q. If a first common mold part is not used in the

13:38:20 3 manufacturing process for the Lexar JumpDrive that you

13:38:23 4 examined, then paragraph 48 would not be true; is that

13:38:26 5 correct?

13:38:27 6 MR. KALER: I'm going to object to the

13:38:28 7 characterization of what is opinion testimony

13:38:35 8 specifically with high confidence.

13:39:07 9 THE WITNESS: Can I have the question again,

13:39:08 10 please.

13:39:10 11 BY MR. KUDLAC:

13:39:11 12 Q. Sure.

13:39:12 13 Do you want the question again? I'm sorry.

13:39:15 14 A. Yes, please.

13:39:16 15 Q. I thought you said you had a question.

13:39:17 16 The question again -- I probably won't get it

13:39:22 17 exactly the same -- if a first common mold part is not

13:39:25 18 used in the manufacturing process for the Lexar

13:39:28 19 JumpDrive that you examined, then paragraph 48 would not

13:39:34 20 be true; is that correct?

13:39:50 21 A. I'm really not -- I'm really not sure because,

13:39:53 22 see, these things, again, go hand in hand.

13:39:55 23 But the '184 patent, okay, to be used, you need

13:40:03 24 the first common mold cavity, you need the first common

13:40:10 25 mold part, and then you need the second mold cavity

13:40:14 1 that's being used in conjunction with the first common
13:40:18 2 mold cavity and the first mold part.

13:40:23 3 So I mean if I took the first mold part and
13:40:28 4 took it out and put it into a different machine -- the
13:40:34 5 way you asked the question, it's sort of ambiguous.

13:40:45 6 Maybe I can explain it a different way.

13:40:47 7 Q. Why is it ambiguous?

13:40:50 8 A. Well, for the '184 patent to work, you have to
13:41:00 9 have this first common mold cavity forming this first
13:41:02 10 common mold part, and then you have to have a second
13:41:06 11 complementary cavity in the same machine.

13:41:15 12 Q. I want to make sure we are getting our
13:41:18 13 terminology right.

13:41:19 14 You have used the term a couple of times,
13:41:21 15 "first common mold part" and now you are talking about a
13:41:25 16 cavity.

13:41:26 17 A. Right.

13:41:26 18 Q. Is the first common mold part a -- for lack of
13:41:29 19 a better word, a piece of metal that when mated with
13:41:33 20 another piece of metal or some other hard substance,
13:41:37 21 those two things together form a cavity between them?

13:41:41 22 A. That's correct.

13:41:41 23 Q. And then you would take away that second part
13:41:46 24 and bring in another complementary part and put it
13:41:51 25 together with the first piece to form a different

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13:41:53 1 cavity; is that right?

13:41:55 2 A. No. You would take a second mold half and

13:41:58 3 combine it with the first mold half, inclusive of the

13:42:03 4 plastic part --

13:42:05 5 Q. Okay.

13:42:06 6 A. -- to form a second mold cavity.

13:42:09 7 Q. Okay. So when we talk about a first common

13:42:11 8 mold part, we are talking about the mold half --

13:42:14 9 A. No.

13:42:15 10 Q. -- half of the first common -- I'm sorry --

13:42:17 11 first of the half -- first -- when we are talking about

13:42:20 12 the first common mold part, are you talking about half

13:42:26 13 of the first mold cavity?

13:42:30 14 A. No. I'm talking about the plastic that's part

13:42:33 15 of the part.

13:42:42 16 Q. So in paragraph 48 where you say, "The first

13:42:46 17 mold cavity utilized to mold the Accused Product is

13:42:50 18 formed of a first common mold part," are you saying that

13:42:55 19 the first common mold part is referring to a plastic

13:42:59 20 piece that is formed in the cavity?

13:43:09 21 A. No. It would be the metal parts.

13:43:14 22 Q. Okay. So then the first common mold part would

13:43:17 23 be the half of the mold that is used in the first shot

13:43:21 24 and the second shot?

13:43:23 25 A. Right.

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13:43:27 1 Q. Excellent. I actually thought we were on the
13:43:30 2 same page. I just wanted to make sure that we were
13:43:33 3 talking about the same thing.

13:43:43 4 Okay. Let's talk about paragraph 49 for a
13:43:45 5 moment, in your declaration.

13:44:00 6 With respect to the process that was used to
13:44:02 7 manufacture the Lexar JumpDrive, if a first common mold
13:44:08 8 part was not used, then what is said in paragraph 49
13:44:17 9 would not be true; is that correct?

13:44:25 10 MR. KALER: Again, I'm going to object to the
13:44:26 11 characterization of true or false on an opinion
13:44:30 12 statement.

13:44:46 13 THE WITNESS: If the first complementary mold
13:44:51 14 part isn't used, then the '184 process wouldn't be used.

13:44:57 15 Is that the question?

13:44:57 16 BY MR. KUDLAC:

13:44:58 17 Q. My question was -- and I may have said
13:45:01 18 "complementary" and I didn't mean to, so let me rephrase
13:45:04 19 the question, or restate it, depending on whether I got
13:45:08 20 it right the first time.

13:45:10 21 If a first common mold part was not used in the
13:45:13 22 manufacturing of the Lexar Media JumpDrive that you
13:45:17 23 inspected, then paragraph 49 would not be true; is that
13:45:22 24 correct?

13:45:24 25 A. Yes.

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13:45:28 1 Q. In the process, as you are setting it forth in
13:45:31 2 the declaration here, it goes through a series of steps.
13:45:37 3 The step that you describe in 48 and then the step that
13:45:41 4 you describe in 49, in that way, the way you've
13:45:46 5 described it in paragraphs 48 and 49, at the end of the
13:45:51 6 step described in 49, at that point, is the first
13:45:55 7 plastic material that you refer to in that paragraph, is
13:45:58 8 that a hollow product at that point?
13:46:04 9 MR. KALER: Objection. Relevance.
13:46:09 10 THE WITNESS: In this case, is the first -- the
13:46:18 11 injected first plastic material, is that a hollow
13:46:21 12 product? Is that your question?
13:46:24 13 BY MR. KUDLAC:
13:46:24 14 Q. Yes.
13:46:25 15 A. The answer would be yes.
13:46:32 16 MR. KALER: Are you asking with regard to the
13:46:35 17 specific accused product, or are you asking with regard
13:46:37 18 to the '184 patent generally?
13:46:39 19 MR. KUDLAC: I was asking with respect to the
13:46:42 20 accused product.
13:46:43 21 MR. KALER: Okay.
13:46:44 22 BY MR. KUDLAC:
13:46:47 23 Q. Did you understand my question that way, that I
13:46:49 24 was referring to the accused product?
13:46:53 25 A. Yes.

13:46:53 1 Q. Okay. Excellent.

13:47:03 2 Would you read paragraph 50 to yourself again

13:47:12 3 and let me know when you're finished.

13:47:44 4 A. I'm finished.

13:47:45 5 Q. Okay. If in the process used to manufacture

13:47:48 6 the Lexar Media JumpDrive that you inspected, a first

13:47:53 7 common mold part is not used, then paragraph 50 would

13:47:57 8 not be true; is that correct?

13:48:00 9 MR. KALER: Same objection.

13:48:13 10 THE WITNESS: It may or may not be true.

13:48:27 11 BY MR. KUDLAC:

13:48:30 12 Q. If a -- if in the process of manufacturing the

13:48:34 13 Lexar Media JumpDrive that you inspected, a first common

13:48:36 14 mold part is not used, then there would not be a step of

13:48:43 15 combining a first common mold part with a second

13:48:48 16 complementary mold part, correct?

13:48:54 17 A. Correct.

13:49:21 18 Q. Would you please turn to paragraph 51.

13:49:24 19 In paragraph 51, in the second sentence -- and

13:49:28 20 you can read the whole thing, obviously -- but in the

13:49:30 21 second sentence, you say, "The second plastic material

13:49:35 22 then solidifies to form a second plastic material

13:49:38 23 component that combines with the first plastic material

13:49:41 24 component to produce the Accused Products."

13:49:45 25 Do you see that?

13:49:47 1 A. Yes.

13:49:49 2 Q. Can you explain how -- well, let me ask a

13:49:53 3 couple backup questions.

13:50:01 4 In your declaration, you don't say whether the

13:50:02 5 first plastic material -- sorry.

13:50:03 6 In your declaration, you don't say what the

13:50:04 7 first plastic material is with respect to the Lexar

13:50:06 8 Media JumpDrive, correct?

13:50:08 9 A. Correct.

13:50:09 10 Q. And with respect to the second plastic

13:50:11 11 material, in your declaration you don't say what that is

13:50:14 12 with respect to the Lexar Media JumpDrive, correct?

13:50:18 13 A. That's correct.

13:50:27 14 Q. And did you attach any drawings of the Lexar

13:50:30 15 Media JumpDrive to your declaration?

13:50:32 16 A. No.

13:50:34 17 Q. Did you attach any photographs of the Lexar

13:50:36 18 Media JumpDrive to your declaration?

13:50:38 19 A. No.

13:50:38 20 MR. KALER: Is Lexar contending it has not

13:50:51 21 received a copy of drawing D5493?

13:51:03 22 MR. KUDLAC: I'm sorry. I don't know what

13:51:04 23 D549 -- I'm not trying to play a game with you, but --

13:51:09 24 MR. KALER: I don't think it was attached to

13:51:10 25 the declaration, but I believe that drawing has been

13:51:13 1 provided to Lexar, yes.

13:51:15 2 BY MR. KUDLAC:

13:51:15 3 Q. As you step through the process, going from
13:51:19 4 paragraph 48 to 49 to 50 and then down to 51, at the end
13:51:25 5 of that process as you've described it, at that point do
13:51:32 6 you have both halves of the Lexar Media JumpDrive
13:51:40 7 plastic shell casing?

13:51:45 8 A. In which context do you mean? In the process
13:51:48 9 that I allege this was made with, or in another process?

13:51:52 10 Q. In the process that you describe in those
13:51:54 11 paragraphs.

13:51:55 12 A. I would have both halves of the product.

13:52:00 13 Q. Would they be in the same mold cavity at that
13:52:06 14 point?

13:52:07 15 A. No.

13:52:07 16 Q. So would they be combined to produce the
13:52:10 17 accused product at that point?

13:52:12 18 A. Yes.

13:52:14 19 Q. Well, when you say "combined," what do you
13:52:18 20 mean, then?

13:52:19 21 Let me ask it a different way.

13:52:21 22 If by the "Accused Product" there you mean the
13:52:23 23 whole thing, at that point after you've gone through
13:52:26 24 step 51, do you have the accused product?

13:52:29 25 MR. KALER: So are you asking with regard to

13:52:31 1 the electronics and everything at this point, or are you
13:52:35 2 just asking about the external casing?

13:52:38 3 MR. KUDLAC: Well, the --

13:52:40 4 Q. I think it's clear how we defined accused
13:52:42 5 products, so --

13:52:44 6 A. Well, we defined the accused product as the
13:52:48 7 whole device, so I don't have the electronics, I don't
13:52:53 8 have the cover, and I certainly don't have a cotter
13:52:57 9 ring.

13:52:58 10 Q. And you also don't have the two halves of the
13:53:01 11 shell put together?

13:53:03 12 A. That's correct.

13:53:05 13 Q. So at that point, after step 51 -- I'm sorry.
13:53:12 14 After the step that you describe in
13:53:13 15 paragraph 51, you have not done the ultrasonic welding;
13:53:20 16 is that correct?

13:53:21 17 A. Or attachment of the two halves to each other.

13:53:36 18 Q. So then at the end of the step described in 51,
13:53:38 19 with the way that you've defined "Accused Product," you
13:53:41 20 don't actually have that accused product yet; is that
13:53:44 21 correct?

13:53:45 22 A. No. It's not assembled.

13:54:03 23 Q. In paragraph 52, starting in line 8, there's a
13:54:07 24 sentence that reads, "The stabilization allows the
13:54:11 25 Accused Products to be produced with improved control of

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13:54:13 1 its dimensions."

13:54:15 2 Do you see that?

13:54:16 3 A. Yes.

13:54:17 4 Q. In your declaration, did you provide any

13:54:19 5 description of the improved control of the dimensions of

13:54:24 6 the accused products?

13:54:26 7 A. No.

13:54:26 8 Q. Did you provide any description in your

13:54:29 9 declaration of the dimensions -- the measurement of the

13:54:33 10 dimensions that you're referring to in paragraph 52?

13:54:37 11 A. No.

13:54:38 12 Q. Did you provide any variance or tolerance

13:54:41 13 measurements for those dimensions?

13:54:43 14 A. No.

13:55:17 15 Q. If you'd look at paragraph 55 of your

13:55:20 16 declaration, which is Exhibit 5, in the sentence

13:55:28 17 beginning at line 27, you state that you have "concluded

13:55:33 18 that the only commercially practical processes in which

13:55:37 19 to make the accused products are processes that infringe

13:55:39 20 claim 1 of the '184 patent."

13:55:41 21 Do you see that?

13:55:42 22 A. Yes.

13:55:43 23 Q. And do you provide the basis for your statement

13:55:45 24 that "the only commercially practical processes in which

13:55:48 25 to make the Accused Products are processes that infringe

13:55:52 1 Claim 1 of the '184 patent"? Do you provide that basis
13:55:55 2 in your declaration?

13:55:56 3 A. No.

13:56:05 4 Q. If you would turn to the final page of the
13:56:09 5 declaration, which is page 11, the paragraph at the top
13:56:16 6 starting in line 1 says, "I have further concluded that
13:56:20 7 the physical evidence indicates the use in the Accused
13:56:25 8 Products of processes that infringe Claim 1 of the '184
13:56:27 9 patent, thus satisfying the substantially likely
13:56:32 10 requirement of 35 U.S.C. §295," do you see that?

13:56:39 11 A. Yes.

13:56:39 12 Q. What did you do to determine what the
13:56:42 13 substantially likely requirement of 35 U.S.C. §295
13:56:46 14 means?

13:56:49 15 A. Well, I compared the two parts of the accused
13:56:52 16 product, which I honestly believe infringe Claim 1 of
13:56:57 17 the '184 patent, and given my knowledge of two-shot
13:57:02 18 injection molding and the production of assembled
13:57:09 19 plastic parts, I'd say there's a fairly high degree of
13:57:16 20 certainty that it meets this requirement.

13:57:22 21 Q. And when you say "a fairly high degree of
13:57:26 22 certainty," what do you mean?

13:57:28 23 A. Well, as I explained before, you can't be
13:57:31 24 totally sure of something, but to me it's most likely
13:57:39 25 this was made using the '184 patent.

13:57:43 1 Q. Have you done a study of injection molding
13:57:46 2 processes used to form jump drives?
13:57:48 3 A. No, I haven't done a study of it.
13:57:51 4 Q. Have you examined other jump drives to see if
13:57:53 5 they were made by the same process as the '184 patent?
13:57:56 6 A. No.
13:57:58 7 Q. Have you done a study of processes that have
13:58:07 8 been used to make plastic parts that have two different
13:58:12 9 materials on them to see if they all use the '184
13:58:15 10 patent?
13:58:21 11 A. I have investigated other products that were
13:58:25 12 believed to use the '184 product.
13:58:28 13 Q. Have you published any papers on the likelihood
13:58:33 14 that plastic products that have two different materials
13:58:36 15 have been made using the '184 patent?
13:58:38 16 A. No, I haven't published any papers on it.
13:58:41 17 Q. Have you submitted any papers for publication
13:58:44 18 to a peer-reviewed journal for that purpose?
13:58:49 19 A. No.
13:58:50 20 Q. So have you done anything that would determine
13:58:53 21 the likelihood that you've made an error in determining
13:58:57 22 your opinion that it was substantially likely made using
13:59:02 23 the '184 patent?
13:59:05 24 A. Yeah. I've analyzed my own thought process and
13:59:09 25 gone through it and said, you know, like, Am I likely to

13:59:13 1 be wrong?

13:59:15 2 And in a couple of cases, there were other ways

13:59:19 3 that you could have done it; like when I talked about

13:59:22 4 assembling the part, it could have been glued or it

13:59:25 5 could have been ultrasonically welded. But having seen

13:59:30 6 the assembly of small parts like this that are made in

13:59:36 7 injection molding machines using robots to line and

13:59:40 8 stack the parts for subsequent staking, it would be my

13:59:43 9 opinion that the most likely, you know, commercially

13:59:49 10 available process that would produce, like, the most

13:59:53 11 money would be to use one of these automated processes.

13:59:58 12 Q. So something using robots?

14:00:00 13 A. Yeah.

14:00:01 14 Q. So do you know whether robots were used in the

14:00:03 15 manufacture of this product or not?

14:00:05 16 A. No, I didn't find any evidence of it.

14:00:09 17 Q. Where did you look?

14:00:11 18 A. I looked at the surfaces.

14:00:15 19 Q. And what would have been a telltale sign of

14:00:19 20 robots being used?

14:00:21 21 A. Well, it might have been some type of mark.

14:00:23 22 Q. So if you were using a two, single-shot process

14:00:29 23 to manufacture this product, would you have found this

14:00:31 24 evidence of robot markings?

14:00:34 25 A. You may or may not.

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14:00:35 1 Q. So it could have been done by hand: Taken out
14:00:38 2 of the mold and moved to another one, right?
14:00:41 3 A. In the single-shot process, yes.
14:00:43 4 Q. Yes. And that wouldn't leave any robot
14:00:45 5 markings, right?
14:00:46 6 A. No.
14:00:46 7 Q. And that would be a decision that each
14:00:48 8 individual manufacturer would make as to whether they
14:00:50 9 wanted to do it that way, or some other way that would
14:00:53 10 possibly infringe the '184 patent?
14:00:56 11 A. Right. It would be the manufacturer's
14:00:58 12 decision, not mine.
14:01:05 13 Q. How many products have you analyzed that you've
14:01:08 14 determined were formed using a multiple single-shot
14:01:15 15 process?
14:01:16 16 A. How many products?
14:01:17 17 Q. Yes, sir.
14:01:18 18 A. I really don't have a number.
14:01:21 19 Q. Did you describe any of that analysis in your
14:01:23 20 declaration?
14:01:24 21 A. No.
14:01:25 22 Q. So we don't really have anything to compare
14:01:27 23 your analysis of the accused product in terms of your
14:01:30 24 conclusion that it's a multi-shot process, as compared
14:01:36 25 to your analysis of other products where you determined

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14:01:39 1 it was multiple single-shot processes, correct?

14:01:43 2 A. That's correct.

14:01:44 3 MR. KUDLAC: Okay. Why don't we take a

14:01:45 4 10-minute break, and I will see if I can wrap things up.

14:01:49 5 MR. KALER: Do you think there will be a few

14:01:50 6 more questions?

14:01:51 7 MR. KUDLAC: If there's more, it's less than 20

14:01:54 8 minutes.

14:01:54 9 MR. KALER: Okay.

14:01:55 10 THE VIDEO OPERATOR: Off the record at 2:01.

14:02:03 11 (Recess from 2:01 p.m. to 2:24 p.m.)

14:24:08 12 THE VIDEO OPERATOR: Back on the record at

14:24:09 13 2:24.

14:24:12 14 BY MR. KUDLAC:

14:24:13 15 Q. In your declaration, you did not provide a cost

14:24:16 16 analysis of any multiple single-shot processes that were

14:24:22 17 available from the 2002 to 2008 time frame; is that

14:24:25 18 right?

14:24:26 19 A. That's correct.

14:24:27 20 Q. In terms of determining whether a process is

14:24:31 21 commercially practical, that determination depends, at

14:24:34 22 least in part, on cost analysis; is that right?

14:24:40 23 A. It would be a substantial part of it.

14:24:43 24 Q. And the cost of the process depends, at least

14:24:45 25 in part, on the labor associated with the process; is

14:24:49 1 that right?

14:24:50 2 A. That's correct.

14:24:51 3 Q. If you were asked in this case to agree to use

14:24:54 4 the information about the manufacturing process used to

14:24:57 5 make the Lexar 128 meg JumpDrive only for this case --

14:25:04 6 in other words, to use it nowhere outside of this

14:25:07 7 case -- could you agree to that?

14:25:10 8 MR. KALER: Objection. You are talking about

14:25:11 9 what the terms of a particular order are likely to be,

14:25:13 10 and I'm not sure having him speculate on that is

14:25:16 11 appropriate.

14:25:17 12 BY MR. KUDLAC:

14:25:17 13 Q. You can answer.

14:25:19 14 A. Could you repeat the question, please.

14:25:21 15 Q. Sure. If you were asked to agree to use the

14:25:24 16 information concerning the process used to manufacture

14:25:28 17 the 128 meg jump drive only in this case, could you

14:25:37 18 agree to that?

14:25:37 19 A. Yes.

14:25:37 20 Q. And have you ever signed a protective order in

14:25:40 21 other litigation that you have worked on that restricted

14:25:44 22 you from using information you learned in that case,

14:25:47 23 confidential information --

14:25:48 24 A. Yes.

14:25:50 25 Q. -- in that case to just that case?

14:25:52 1 A. Yes.

14:25:53 2 MR. KUDLAC: Those are all the questions I have

14:25:54 3 for the witness today.

14:25:56 4 Thank you.

14:25:56 5 MR. KALER: I'm good.

14:25:57 6 MR. KUDLAC: All right. We're done.

14:26:00 7 THE WITNESS: That's it? We're done.

14:26:03 8 Thank you.

14:26:04 9 MR. KUDLAC: Thank you very much. Off the

14:26:05 10 record?

14:26:06 11 MR. KALER: Well, do we need to discuss on the

14:26:08 12 record any issues about document handling or anything?

14:26:12 13 MR. KUDLAC: We were -- actually, there was one

14:26:13 14 thing --

14:26:14 15 MR. KALER: You can use these copies. I can

14:26:16 16 make new copies for myself. You can use the two copies

14:26:20 17 we talked about here.

14:26:21 18 MR. KUDLAC: Okay. Can we just mark them and

14:26:22 19 then have them part of the record?

14:26:25 20 MR. KALER: Sure. Why don't you mark those on

14:26:26 21 the record.

14:26:27 22 MR. KUDLAC: Okay. Just for completion, we'll

14:26:29 23 mark as Exhibit 7 an 8½-by-11 copy of a drawing produced

14:26:38 24 by plaintiff.

14:26:43 25 (Exhibit 7 was marked for identification.)

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14:26:45 1 MR. KUDLAC: And Exhibit 8, a --

14:26:50 2 MR. KALER: We're on the record.

14:26:52 3 MR. KUDLAC: Just a second. Is this a D-sized

14:26:54 4 drawing?

14:26:55 5 MR. KALER: That is a D-sized drawing, yes.

14:26:57 6 MR. KUDLAC: We will mark as Exhibit 8 a

14:26:58 7 D-sized drawing produced by plaintiff in this case at

14:27:01 8 the deposition.

14:27:02 9 (Exhibit 8 was marked for identification.)

14:27:03 10 MR. KALER: And the other one is an A-sized

14:27:06 11 drawing.

14:27:07 12 MR. KUDLAC: Thank you.

14:27:08 13 THE VIDEO OPERATOR: This concludes the

14:27:09 14 deposition of Stephen Petrie, Ph.D.

14:27:13 15 Off the record at 2:27.

16 (The Video Deposition concluded at 2:27 p.m.)

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I declare under penalty of perjury under the laws
of the State of California and the United States of
America that the foregoing is true and correct.

10 STEPHEN PAUL PETRIE, Ph.D.

1 COUNTY OF SAN DIEGO,)

2 STATE OF CALIFORNIA.)

3 I, Lynn Penfield, a Certified Shorthand Reporter

4 No. 8589, State of California, RPR, do hereby

5 certify:

6 That the witness in the foregoing deposition,

7 STEPHEN PAUL PETRIE, Ph.D.,

8 was by me sworn to testify the truth in the within

9 entitled cause; that said deposition was taken at the

10 time and place therein named and was reported by me in

11 shorthand and transcribed by means of computer-aided

12 transcription, and that the foregoing 104 pages is a

13 full, complete and true record of said proceeding.

14 And I further certify that I am a disinterested

15 person and am in no way interested in the outcome of

16 said action, or connected with or related to any of the

17 parties in said action, or to their respective counsel.

18 The dismantling, unsealing, or unbinding of the

19 original transcript will render the reporter's

20 certificate null and void.

21 IN WITNESS WHEREOF, I have hereunto set my hand

22 this 5th day of June, 2008.

23

24

25 Lynn Penfield, CSR No. 8589, RPR